IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.336 OF 1989

Vinay Laxmidas Shah ..Plaintiff

V/s.

M/s.Shah Lakhamidas Chhaganlal & ors ..Defendants

Mr.Ramesh Jain i/b. Kusum Jain, advocate, for plaintiff
None for the defendants

CORAM : V.C.DAGA, J.

DATE : 28TH NOVEMBER, 2007

ORAL JUDGMENT

1. Plaintiff is the husband and heir and legal representative of Late Smita Shah, who has filed this suit for recovery of Rs.1,15,519/- with interest thereon @ 18% p.a. and claimed future interest on Rs.85,895.06/- @ 6% p.a. from the date of the suit till realisation of full and final dues. According to plaintiff, "sarafi deposit", by way of a loan, was given to the defendants for their business at agreed rate of interest @ 18% p.a.

2. According to plaintiff, on 2nd November, 1986 (Diwali), defendant No.1 partnership firm forwarded Extract of statements of account maintained by them in their ledger duly signed by one of the partners i.e.defendant No.3, Mr.Shah Laxmidas Chhaganlal for confirmation of plaintiff and thereby acknowledged their liability.

3. Plaintiff further states that the said deposit was sought to be demanded by registered letter dated 10th October, 1988 issued through his advocate. The said letter was returned with postal acknowledgement "Not Claimed" which according to the plaintiff amounts to good service. The plaintiff was required to file this suit since the defendants did not pay liability of the plaintiff.

4. On being summoned the defendant Nos.2 & 5 appeared. They filed their Written Statement; whereas other defendants did not file their Written Statement. Defendant No.3 has expired during pendency of the suit. His heirs and legal representatives have not brought on record. Suit

against him has already abated.

5. Considering the rival pleadings this Court was pleased to frame the issues on 21st August, 2007.

	Issues	Findings
i)	Whether the plaintiff proves that the deceased wife of the plaintiff advanced a Sarafi loan to the defendants at 18% p.a.interest in respect of which there was a Confirmation for and on behalf of defendant No.1 of 2nd November, 1986 ?	Yes
ii)	Whether the plaintiff proves that he is entitled to the suit claim with interest as claimed ?	Yes
iii)	Whether defendants prove that the suit is barred by limitation ?	No
iv)	Whether the defendants prove that no consideration was received by defendant No.1 in respect of the said alleged confirmation ?	No
v)	What relief ?	Suit decreed as prayed
vi)	What order ?	As per final order

6. Plaintiff has filed affidavit of his duly constituted and authorised Attorney Shri Bhadresh Lalitkant Motiwala. He examined himself on oath in the Court. He has proved acknowledgement of liability given by defendant No.3 for and on behalf of defendant No.1 which acknowledgement as on 2nd November, 1986 in the sum of Rs.85,895.06/-.

7. Demand Notice is placed on record alongwith original postal sealed envelopes with postal endorsement "Not Claimed". It is thus, clear that liability is an acknowledged liability, acknowledged by the defendants. The demand is also proved which, specifically, mentions failure on the part of the defendants to pay outstanding dues to the plaintiff. The plaintiff would entitled for the decree. The defendants have chosen to remain absent. Nobody appeared on behalf of the defendants. They did not cross examine witness of the plaintiff. The suit is practically undefended. Plaintiff has proved his claim in toto. Under these circumstances, plaintiff would be entitled for a decree. Hence, this order.

ORDER

(i) Suit is decreed in terms of prayer incorporated in the plaint and plaintiff would be entitled to recover Rs.1,15,519/- with interest @ 18% p.a. on Rs.85,895.06/- with future interest thereon @ 6% p.a.from the date of the suit till recovery in full and final with cost.

(**V.C.DAGA,J.**)